



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2004

Ms. Maleshia B. Farmer
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2004-8456

Dear Ms. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 210387.

The City of Fort Worth (the "city") received a request for sixteen categories of a variety of information relating to a specified discrimination complaint, certain city employees and accident reports, and particular "claims or grievances." You state that the city will release some of the requested information to the requestor. You claim that the remaining requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that person may submit comments stating why information should or should not be released).

Section 552.103 of the Government Code provides in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The city maintains the burden of providing relevant facts and documents to show that section 552.103 is applicable in this situation. The test for meeting this burden is a showing by the city that (1) litigation was pending or reasonably anticipated on the date that it received this request, and (2) the information at issue is related to that pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *see also Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for the information at issue to be excepted from disclosure pursuant to section 552.103.

We note that the mere chance of litigation will not trigger section 552.103. *See* Open Records Decision No. 452 at 4 (1986). In order to adequately demonstrate that litigation is reasonably anticipated, the city must furnish us with concrete evidence showing that litigation is realistically contemplated and is more than mere conjecture. *See id.* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). This office has stated that a pending Equal Employment Opportunity Commission (the "EEOC") complaint indicates that litigation is reasonably anticipated. *See* Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). Among the documents that you have submitted to us for our review is a "Dismissal and Notice of Rights" from the EEOC, dated April 30, 2004. The notice indicates that the complainant has the right to sue on the claim for ninety days following the date of receipt of the notice. You inform us that the city received the instant request for information on July 14, 2004, which is less than ninety days from the date of the notice. Thus, we find that litigation was reasonably anticipated against the city on the date that it received the instant request for information and that the submitted records are related to that anticipated litigation for purposes of section 552.103(a). Consequently, we find that section 552.103 is applicable to the submitted information.

We note, however, that once information has been obtained by all parties to the anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the potential opposing party in the anticipated litigation is generally not excepted from disclosure under section 552.103(a) and must be disclosed.¹ *See* Attorney General Opinion MW-575 (1982);

¹ We further note that the applicability of section 552.103(a) ends once the litigation has been concluded.

see also Open Records Decision No. 350 (1982). In this regard, we note that portions of the submitted information have been obtained by the potential opposing party in this matter. Accordingly, with the exception of the information that has been obtained by the potential opposing party in this matter that we have marked to be released, the city may withhold the submitted information pursuant to section 552.103 of the Government Code.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be

² Because we base our ruling on section 552.103 of the Government Code, we need not address your remaining claimed exception to disclosure.

sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 210387

Enc. Marked documents

c: Mr. David D. Henley
1724 Country Manor
Fort Worth, Texas 76115
(w/o enclosures)